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Minor Drivers Held to the Adult Standard of Care: Neudeck v. Bransten (Cal. 1965) Case Notes

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CASE NOTES

MINOR DRIVERS HELD TO THE ADULT STANDARD OF CARE: *NEUDECK V. BRANSTEN* (CAL. 1965)

As a general rule, the standard of care required of minors charged with negligence has not been the adult standard of "a reasonable and prudent man under similar circumstances." Taking into consideration the obvious fact of a minor's immaturity and lack of experience, the courts have imposed a far more limited standard of care commensurate with the child's age, intelligence and experience under like circumstances.[1]

However, with reference to a minor's use of certain powerful and rather lethal instrumentalities such as an automobile, the wisdom of this rule has been increasingly questioned.

> The "well settled" principle that a minor, although liable for his negligence, need not have conducted himself with adult prudence and circumspection but need have acted only as a reasonable person of his age and experience would have under similar circumstances is in serious question today insofar as its applicability to minor operators of motor vehicles or other motor-powered devices is concerned.[2]

In the recent case of *Neudeck v. Bransten*,[3] the First District Court of Appeal followed what might be termed the "modern rule"[4] by holding that an exception to the general rule arises when negligence is attributed to a minor while he is operating a motor vehicle. In this particular situation a minor is to be held to the adult standard of care.

> We hold that when a minor engages in an activity such as driving, which is normally undertaken by adults and for which adult qualifications are required, an exception to the general rule arises, and the minor should be held to the ordinary standard of care.[5]

In *Neudeck*, the vehicle driven by a 16-year-old minor struck plaintiff's vehicle in an intersection collision. There was evidence to the effect that the defendant minor had been negligent. The trial court gave judgment for the plaintiff. The defendant minor appealed

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[1] See, *e.g.*, RESTATEMENT (SECOND), TORTS § 283A (1965); PROSSER, TORTS § 32 (3d ed. 1964).

[2] 97 A.L.R.2d 872, 874 (1964).

[3] 233 A.C.A. 1, 43 Cal. Rptr. 250 (1965).

[4] See, *e.g.*, 97 A.L.R.2d 872 (1964); RESTATEMENT (SECOND), TORTS § 283A, comment *c* (1965); PROSSER, TORTS § 32, at 159 (3d ed. 1964).

[5] 233 A.C.A. 1, 6, 43 Cal. Rptr. 250, 253 (1965).

on the ground that the trial court erred in refusing to give defendant's proposed instruction, which stated: "A child is not held to the same standard of conduct as an adult and is only required to exercise that degree of care which ordinarily is exercised by children of like age, mental capacity and experience. . . ."[6]

As authority for this proposed instruction, defendant relied upon *Lehmuth v. Long Beach Unified Sch. Dist.*[7] In *Lehmuth* the minor driver of an automobile towing a sound trailer, which was not equipped with a safety chain as required by California law, was held not to be liable for the personal injuries sustained by pedestrians who were struck by the trailer after it had broken loose. In ruling that the trial court's instruction (which was substantially the same as defendant's proposed instruction in *Neudeck*)[8] had been correct, the Supreme Court stated that a minor's age alone, even though it is 18 years, does not sufficiently establish maturity such as to impose upon him the standard of care applicable to an adult.[9] However, in a concurring opinion in *Lehmuth*, Justice Schauer took exception to the holding of the majority, by saying:

> It is my view, however, that minors who undertake to drive motor vehicles upon the public highways of this state should be subject to the same rules governing operation of such vehicles and to the same liability for breach of such rules, as are adults.[10]

Since *Lehmuth*, other cases in this area have conflicted over the standard of care that is applicable to a minor driver.

In *Shmatovich v. New Sonoma Creamery*,[11] considering the issue of the alleged contributory negligence of a 17-year-old driver, the First District Court of Appeal, relying on *Lehmuth*, ruled that a minor is not to be held to the same standard of care as an adult even where the alleged negligence of the minor occurs while in the operation of a motor vehicle.

In *Goodwin v. Bryant*,[12] involving the alleged primary negligence of a minor driver in an intersection collision, the Fifth District Court, citing *Lehmuth*, reluctantly held that the trial court's instruc-

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[6] 1 CAL. JUR. INST. CIV. 4th, No. 147 (1956).

[7] 53 Cal. 2d 544, 348 P.2d 887, 2 Cal. Rptr. 279 (1960).

[8] See text accompanying note 6 *supra*.

[9] The court in Lehmuth cites Guyer v. Sterling Laundry Co., 171 Cal. 761, 154 Pac. 1057 (1916), and Satariano v. Sleight, 54 Cal. App. 2d 278, 129 P.2d 35 (1942), as authority for its holding. It should be noted that while both cases involved the alleged negligence of minors, neither involved the operation of a motor vehicle by a minor.

[10] 53 Cal. 2d 544, 557, 348 P.2d 887, 895, 2 Cal. Rptr. 279, 287 (1960).

[11] 187 Cal. App. 2d 342, 9 Cal. Rptr. 630 (1960).

[12] 227 Cal. App. 2d 785, 39 Cal. Rptr. 132 (1964).

tion applying the general standard of care required of minors had been correctly given.

> . . . the Supreme Court has specifically ruled that the instruction with respect to a minor involved in an automobile collision is correct (*Lehmuth v. Long Beach Unified Sch. Dist.* . . .), and as an intermediate appellate court we are bound by the foregoing rule. . . . Accordingly, the instruction must be approved by us.[13]

However, in a case decided the same month as *Shmatovich*, the Second District Court of Appeal made no mention of *Lehmuth* and held, relative to the alleged contributory negligence of a minor driver, that the court need not take into consideration the great disparity in the ages of the two drivers: "The same duty is imposed by law on all licensed drivers and there is no distinction made as to ages."[14]

Noting the apparent conflict of these cases and the peculiar factual situation in *Lehmuth*, the First District Court of Appeal in *Neudeck* was presented with an opportunity to review and clarify the law on this issue. The court acknowledged the general rule which establishes separate standards of care for minors and adults. However, they state that an exception to this general rule arises when a minor "engages in an activity such as driving, which is normally undertaken by adults and for which adult qualifications are required. . . ."[15] When a minor engages in such an activity he forfeits the more limited standard of care based on his age, intelligence, and experience and is to be held to the adult standard of a reasonable and prudent man. The court goes on to say that such an exception does not conflict with *Lehmuth*. The language in *Lehmuth* approving the instruction that applied the more limited standard of care to the defendant minor did not in fact refer to the minor's operation of the motor vehicle, but referred only to his failure to employ the prescribed safety chain.

As a basis for it's decision, the court cites with approval *Dellwo v. Pearson*,[16] in which the Supreme Court of Minnesota stated:

> To give legal sanction to the operation of automobiles by teen-agers with less than ordinary care for the safety of others is impractical today, to say the least. . . . While minors are entitled to be judged by standards commensurate with age, experience, and wisdom when

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13 *Id.* at 794-95, 39 Cal. Rptr. at 138.

14 Elliot v. Jensen, 187 Cal. App. 2d 389, 394, 9 Cal. Rptr. 642, 646 (1960).

15 233 A.C.A. 1, 6, 43 Cal. Rptr. 250, 253 (1965). However, the court was not called upon to decide whether this exception extends to contributory negligence or is limited to the issue of a minor's primary negligence. See 97 A.L.R.2d 872 (1964) for a discussion on this issue.

16 259 Minn. 452, 107 N.W.2d 859, 97 A.L.R.2d 866 (1961).